REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed September 20, 2005. Through this response, claims 1, 6, 7, and 14 have been amended. Reconsideration and allowance of the application and pending claims 1-24 are respectfully requested.

I. Specification Amendments

Various amendments have been made to the specification through this response to correct typographical and grammatical errors and to provide a correct and accurate description of Applicants' embodiments of the invention as originally disclosed. Although these amendments effect several changes to the specification, it is respectfully asserted that no new matter has been added.

II. Claim Rejections - 35 U.S.C. § 112, Second Paragraph

Claim 6 has been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. In particular, the Examiner Office Action provides as follows (page 2):

> Claim 6 recites the limitation "the system of claim 1, wherein the *time adjuster*" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Applicants have amended claim 6 to depend from claim 5, the latter in which the "time adjuster" is introduced, thus providing proper antecedent support for the claim term. In view of the above-described amendment to claim 6, it is respectfully asserted that claim 6

currently defines an embodiment of the invention in the manner required by 35 U.S.C. § 112. Accordingly, it is respectfully requested that the rejection to this claim be withdrawn.

III. Claim Rejections – 35 U.S.C. § 101

The Office Action asserts the following on page 2:

> Claims 14-17 have been rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. A computer program is not statutory subject matter.

Applicants have amended claim 14, from which claims 15-17 depend, to incorporate computer readable medium language. In view of the above describe amendments to the claims, it is respectfully asserted that claims 14-17 currently define embodiments of the invention in the manner required by 35 U.S.C. § 101. Accordingly, it is respectfully requested that the rejections to these claims be withdrawn.

IV. Claim Rejections - 35 U.S.C. § 102(b)

A. Statement of the Rejection

Claim 18 has been rejected under 35 U.S.C. § 102(b) as allegedly anticipated by *Tolopka et al.* ("*Tolopka*," U.S. Pat. No. 6,044,349). Applicants respectfully traverse this rejection.

B. Discussion of the Rejection

It is axiomatic that "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration." *W. L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983). Therefore,

every claimed feature of the claimed invention must be represented in the applied reference to constitute a proper rejection under 35 U.S.C. § 102(b).

In the present case, not every feature of the claimed invention is represented in the *Tolopka* reference.

Independent Claim 18

Claim 18 recites (with emphasis added):

> 18. A method for providing security to property having an image capture device, the method comprising the steps of:
> ***capturing a first image of an object with the image capture device***;
> generating an image key, the image key corresponding to the first image of the object;
> ***capturing a second image of the object with the image capture device***;
> ***comparing the image key with the second image of the object***; and
> enabling use of the property only if the image key corresponds to the second image of the object.

Applicants respectfully submit that *Tolopka* fails to disclose at least the emphasized claim features. Independent claim 18 requires a comparison of an image key corresponding to an act of ***capturing a first image of an object with the image capture device*** with a second image corresponding to an act of ***capturing a second image of the object with the image capture device***. In other words, the same device is responsible for the two image captures. Nothing in *Tolopka* discloses, teaches, or suggests that the device used to provide the retina scan or other image capture is similarly used to capture the reference object to which a comparison is made. Thus, Applicants respectfully request that the rejection to independent claim 18 be withdrawn.

Because independent claim 18 is allowable over *Tolopka*, dependent claims 19-24 are allowable as a matter of law for at least the reason that the dependent claims 19-24

contain all elements of their respective base claim. See, *e.g.*, *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

Due to the shortcomings of the *Tolopka* reference described in the foregoing, Applicants respectfully assert that *Tolopka* does not anticipate Applicants' claims. Therefore, Applicants respectfully request that the rejection of these claims be withdrawn.

V. Claim Rejections - 35 U.S.C. § 103(a)

A. Rejection of Claims 1-24

Claims 1-24 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Yves Audebert* ("*Audebert*," U.S. Pat. No. 5,937,068) and further in view of *Tolopka*. Applicants respectfully traverse this rejection.

B. Discussion of the Rejection

As has been acknowledged by the Court of Appeals for the Federal Circuit, the U.S. Patent and Trademark Office ("USPTO") has the burden under section 103 to establish a *prima facie* case of obviousness by showing some objective teaching in the prior art or generally available knowledge of one of ordinary skill in the art that would lead that individual to the claimed invention. *See In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). The Manual of Patent Examining Procedure (MPEP) section 2143 discusses the requirements of a *prima facie* case for obviousness. That section provides as follows:

> To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teaching. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make

the claimed combination and reasonable expectation of success must be found in the prior art, and not based on applicant's disclosure.

In the present case, Applicants respectfully submit that a *prima facie* case for obviousness has not been established.

Independent Claim 1

Claim 1 recites (with emphasis added):

1. A system for preventing unauthorized use of property, the property comprising:
an image capture system configured to capture an image of an object, and further configured to generate data corresponding to the image of the captured image;
a processor configured to compare an image key with the data corresponding to the captured image, and further configured to enable use of the property only if the data corresponding to the captured image corresponds to the image key, the image key corresponding to the object; and
a security timer configured to time a period of time referenced from activation of the property such that the processor compares the image key with the data corresponding to the captured image after the period of time has elapsed.

Applicants respectfully submit that *Audebert* in view of *Tolopka* fails to disclose, teach, or suggest at least the emphasized claim features. The Office Action refers to col. 3, lines 43-52 of *Audebert* for support of alleged anticipation of the security timer features, which provides as follows:

In view of this tolerance range, the password calculated with each access request still remains valid for the duration of each interval separating two operations of calculating the dynamic variable. Such an interval may have a relatively long duration (typically 10 minutes or more, for example) so that an eavesdropper surreptitiously obtaining the password and the static variable for a card on the occasion of an access request will have time to use it throughout the aforesaid interval in the server and will thus easily be able to obtain access authorization.

This cited section does not disclose the explicit claim features pertaining to the security timer features. It appears that this section simply conveys that there is an interval of time in

systems in the prior art where an eavesdropper has a window of opportunity to use the password and static variable to obtain access authorization. There is no indication that this interval is actually timed, or that such an interval of time is communicated to a processor.

The Office Action further asserts on page 5 that the card in *Tolopka* "contains an adjustable timer used to limit access times," and refers to *Tolopka*, col. 5, lines 38-54, which provides as follows:

> Any number of access key security measures can be employed. For example, the access key could be encrypted so that it can only be used and not read or copied by the entity seeking access. The access key could also be time limited for use within a certain number of minutes or days after being downloaded, or it could be valid for only a limited number of accesses.
>
> Using public key cryptography, for instance, an access key could be dynamically created or modified depending on who is the recipient of the key. When a location/key pair is downloaded, a user interface on ISS 130 could prompt the user to either use a default access key or define a unique access key. In which case, a user could selectively set a time-out parameter for the access key to be revoked after a particular amount of time. Dynamically created access keys can have additional uses, such as varying the number of authorized accesses or the level of access within a location.

The time-out feature described above in *Tolopka* ***referenced from activation of the property***, as recited in amended independent claim 1. Accordingly, Applicants respectfully submit that the combined teachings of *Tolopka* and *Audebert* fail to disclose, teach, or suggest at least the above-emphasized claim features, and thus respectfully request that the rejection to independent claim 1 be withdrawn.

Because independent claim 1 is allowable over *Tolopka* and *Audebert*, dependent claims 2-6 are allowable as a matter of law.

Independent Claim 7

Claim 7 recites (with emphasis added):

7. A method for providing security to property, the method comprising the steps of:
receiving an image key corresponding to an image of an object;
receiving a captured image of the object from an image capture device;
timing a time period referenced from activation of the property;
comparing the image key with the captured image of the object; and
enabling use of the property only if the image key corresponds to the captured image of the object.

For similar reasons described above in association with independent claim 1, Applicants respectfully submit that *Audebert* in view of *Tolopka* fails to disclose, teach, or suggest at least the emphasized claim features, and respectfully request that the rejection to independent claim 7 be withdrawn.

Because independent claim 7 is allowable over *Tolopka* and *Audebert*, dependent claims 8-13 are allowable as a matter of law.

Independent Claim 14

Claim 14 recites (with emphasis added):

14. A computer readable medium having a program for preventing the unauthorized use of property, the image key corresponding to a stored digital image of an object, the program being stored as a computer readable medium, the program comprising:
logic configured to retrieve an image key, the image key corresponding to a stored digital image of an object;
logic configured to receive digital data corresponding to a most recently captured image of the object;
logic configured to time a period of time referenced from activation of the property;
logic configured to compare the most recently captured image of the object and the image key; and
logic configured to enable the use of the property only if the most recently captured image of the object corresponds to the image key.

For similar reasons described above in association with independent claim 1, Applicants respectfully submit that *Audebert* in view of *Tolopka* fails to disclose, teach, or suggest at

least the emphasized claim features, and respectfully request that the rejection to independent claim 14 be withdrawn.

Because independent claim 14 is allowable over *Tolopka* and *Audebert*, dependent claims 15-17 are allowable as a matter of law.

Independent Claim 18

As described above in Section IV in association with the discussion of independent claim 18, Applicants respectfully submit that *Tolopka* fails to disclose the above-mentioned features of independent claim 18. Further, Applicants respectfully submit that *Audebert* fails to remedy these deficiencies. Accordingly, Applicants respectfully submit that *Audebert* in view of *Tolopka* fails to disclose, teach, or suggest at least the emphasized claim features, and respectfully request that the rejection to independent claim 18 and dependent claims 19-24 be withdrawn.

In summary, it is Applicants' position that a *prima facie* for obviousness has not been made against Applicants' claims. Therefore, it is respectfully submitted that each of these claims is patentable over the cited art of record and that the rejection of these claims should be withdrawn.

CONCLUSION

Applicants respectfully submit that Applicants' pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and official notice, and similarly interpreted statements, should not be considered well known since the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,

David Rodack
Registration No. 47,034